

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

AMERICA FOREST HOLDINGS,
LLC, a Wyoming limited liability
company; AMERICAN FOREST
LAND COMPANY, LLC, a Wyoming
limited liability company; JOHN R.
RUDEY and LAURIE G. RUDEY,
husband and wife and residents of New
York; COPPER BEECH FARM, LLC,
a Wyoming limited liability company;
COPPER BEECH FARM, INC., a
Wyoming corporation,

Plaintiffs,

v.

BANK OF AMERICA NA, a foreign
corporation,

Defendant.

NO: CV-10-3044-RMP

ORDER ON MOTION TO COMPEL

This case was filed in Kittitas County Superior Court and removed to federal court before Judge Edward Shea (Ct. Rec. 1). Defendant filed a Motion to Dismiss Plaintiffs' original complaint (Ct. Rec. 4). Subsequent to Defendant's filing the first Motion to Dismiss, this case was transferred to this Court, and Plaintiffs filed

ORDER ON MOTION TO COMPEL ARBITRATION ~1

1 a First Amended Complaint (Ct. Rec. 19). Defendant subsequently filed a second
2 Motion to Dismiss based on Plaintiffs' First Amended Complaint (Ct. Rec. 23).

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4 On November 22, 2010, Plaintiffs filed a Motion to Compel Arbitration and
5 Stay Proceedings (Ct. Rec. 30). In their motion, Plaintiffs contend that the parties
6 are bound by an arbitration clause in their Second Amended and Restated Credit
7 Agreement which covers all current disputes (Ct. Rec. 30 at 2).

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9 Defendant responded and agrees that all of the claims are subject to the
10 arbitration agreement (Ct. Rec. 35 at 1). However, Defendant requests attorney
11 fees, claiming that Plaintiffs have used this action as a tactic to avoid foreclosure
12 (Ct. Rec. 35 at 7). Defendant further requests that the Court dismiss the case
13 without prejudice rather than stay the case (Ct. Rec. 35 at 6).

14 **APPLICABLE LAW**

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16 The Federal Arbitration Act ("FAA") mandates that district courts
17 direct the parties to arbitrate issues in which an arbitration agreement has
18 been signed. *Dean Witter Reynolds v. Byrd*, 470 U.S. 213, 218 (1985). The
19 FAA reflects Congress' intent to provide for the enforcement of arbitration
20 agreements within the full reach of the Commerce Clause. *Simula, Inc. v.*
21 *Autoliv, Inc.*, 175 F.3d 716, 719 (9th Cir. 1999).

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23 The standard for demonstrating arbitrability is not high. *Miller v. Northwest*
24 *Trustee Services, Inc.*, 2005 U.S. Dist. Lexis 43770 (E.D. Wash. July 20, 2005);

1 *Simula, Inc. v. Autoliv, Inc.*, 175 F.3d 716, 719 (9th Cir. 1999). Federal courts
2 must order parties to proceed to arbitration if there has been a "failure, neglect, or
3 refusal" to honor an agreement to arbitrate. See 9 U.S.C. § 4.
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5 Absent unmistakably clear language to the contrary, arbitration should be
6 ordered unless it can be said that the arbitration clause is not susceptible of an
7 interpretation that covers the asserted dispute. *Moses H. Cone Mem'l Hosp. v.*
8 *Mercury Constr. Corp.*, 460 U.S. 1, 24-25, 103 S. Ct. 927, 74 L. Ed. 2d 765,
9 (1983); *AT & T Technologies, Inc. v. Communications Workers of America*, 475
10 U.S. 643, 650 (1986). "[A]ny doubts concerning the scope of arbitrable issues
11 should be resolved in favor of arbitration." *Simula, Inc. v. Autoliv, Inc.*, 175 F.3d
12 716, 719 (9th Cir. 1999) (quoting *Moses H. Cone*, 460 U.S. at 24-25). To require
13 arbitration, factual allegations need only "touch matters" covered by the contract
14 containing the arbitration clause and all doubts are to be resolved in favor of
15 arbitrability. *Simula, Inc. v. Autoliv, Inc.*, 175 F.3d 716, 719 (9th Cir. 1999).
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18 The Court's role under the Act is therefore limited to determining (1)
19 whether a valid agreement to arbitrate exists and, if it does, (2) whether the
20 agreement encompasses the dispute at issue. See 9 U.S.C. § 4; *Chiron Corp. v.*
21 *Ortho Diagnostic Systems, Inc.*, 207 F.3d 1126, 1130 (9th Cir. 2000). If the court
22 orders arbitration, the FAA provides for a stay pending compliance. 9 U.S.C. § 3.
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DISCUSSION

After reviewing the record and pleadings in this matter, the Court agrees with the parties that there is a valid agreement to arbitrate and that the agreement encompasses all claims in the current dispute (Ct. Rec. 6-1 at 77).

Defendant requests attorney's fees, claiming that Plaintiffs have used this action to avoid foreclosure (Ct. Rec. 35). To award sanctions, a court must make a finding of bad faith. *United Steel, Paper & Forestry v. Shell Oil Co.*, 549 F.3d 1204, 1209 (9th Cir. 2008). There is insufficient evidence on which to base a finding that Plaintiffs have acted in bad faith. Therefore, Defendant's request for attorney's fees is denied. Defendants also request that this case be dismissed without prejudice rather than stayed. Plaintiffs advocate for a stay and rely on the

1 FAA. 9 U.S.C. § 3.¹ Defendant cites a series of Ninth Circuit cases that dismissed
2 actions covered by the FAA rather than staying them (Ct. Rec. 35 at 6-7). Pursuant
3 to the express language of the FAA, the Court grants Plaintiffs' motion to stay the
4 case.
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6 Finally, Plaintiffs, in their reply, disclose that Defendants have submitted a
7 demand for arbitration to the American Arbitration Association asking that the
8 arbitration be set in Connecticut (Ct. Rec. 37 at 5). Plaintiffs believe the proper
9 venue for the arbitration is Washington (Ct. Rec. 37 at 13). Plaintiffs refer to the
10 agreement to arbitrate for support and ask the Court to find that arbitration in this
11 matter should take place in Washington (Ct. Rec. 37 14-15).
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17 ¹9 U.S.C. § 3 states: If any suit or proceeding be brought in any of the courts of
18 the United States upon any issue referable to arbitration under an agreement in
19 writing for such arbitration, the court in which such suit is pending, upon being
20 satisfied that the issue involved in such suit or proceeding is referable to arbitration
21 under such an agreement, shall on application of one of the parties stay the trial of
22 the action until such arbitration has been had in accordance with the terms of the
23 agreement, providing the applicant for the stay is not in default in proceeding with
24 such arbitration.
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1 The Court notes that Plaintiffs cite no case law supporting their position that
2 this Court should expand its limited review under the FAA to consider the proper
3 venue for arbitration. As stated *supra*, the Court's role under the FAA is limited to
4 determining (1) whether a valid agreement to arbitrate exists and, if it does, (2)
5 whether the agreement encompasses the dispute at issue. *See* 9 U.S.C. § 4; *Chiron*
6 *Corp. v. Ortho Diagnostic Systems, Inc.*, 207 F.3d 1126, 1130 (9th Cir. 2000). To
7 go further and interpret the proper venue in the arbitration agreement would be
8 improper. Accordingly,
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12 **IT IS HEREBY ORDERED:**

- 13 1. Plaintiffs' Motion to Compel Arbitration (**Ct. Rec. 30**) is **GRANTED**. This
14 action is hereby **stayed** and the parties are ordered to submit all claims and
15 counterclaims to arbitration in accordance with the parties' written
16 agreement.
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18 2. All other pending motions are **DENIED AS MOOT**.
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20 3. All court dates, in any, are hereby **STRICKEN**.
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22 The District Court Executive is hereby directed to enter this Order, stay this
23 case, and provide copies of this Order to counsel.
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25 **DATED** this 28th day of January, 2011.

26 s/ Rosanna Malouf Peterson
27 ROSANNA MALOUF PETERSON
28 United States District Court Judge